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File No. 1-7/49

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Subject:

Opinion On the Bombay Hay Trade licensing Order 1944

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C O N T E N T S.

Legal Department File No.O/Hay/49.

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Legal Department.

The only questions for the consideration of the R.L.A. are -

(i) Whether a Hay consumer Importer is covered by the provisions of clause 8A and 8B of the Bombay Hay Trade Licensing Order 1944 and is therefore prohibited from selling hay at a price higher than the maximum price fixed by the Government and is required to issue a cash-memo relating to such sale; and

(ii) Whether a cooperative society doing the business of a hay consumer Importer, should be prohibited from charging commission from its members in the manner provided by its bye-laws for importing hay in the Greater Bombay and Scheduled villages.

2. The answer to the question (1) is in the negative. The provisions of clause 8A (1) and (2) have been specifically made applicable to a hay dealer, hay retailer and hay commission agent. But a hay consumer importer, (including a cooperative society), has been excluded from their scope. The notification issued under clause 8B(2) fixing the maximum price of hay would not affect a hay consumer importer who is prohibited under clause 4 of the licence Form F of the Order from selling hay to any person except, in the case of an association to itsmembers.

3. Question (ii). In view of the answer to question (1), the question of asking a cooperative society, as proposed in the direction at page 18 ante, to refund to its members the commission fee of Rupee one recovered by the society does not arise. Even if the order is amended, so as to require a co-operative society, which is also a hay consumer importer, to sell hay to its members at controlled rates it would not be propar to deprive such society of its commission as provided by its bye-law

Under Explanation to sub-clause (c) of clause 2 of the Order it is permissible for persons owning animals to form themselves into a society for the purpose of obtaining a hay consumer importer's licence. If such society purchases hay on behalf of its members in the Thana or Surat Districts and undertakes to bring it to a railway grass yard in the Greater Bombay for the benefit of its members, it is but proper that the society should ask its members to compensate it for the expenses incurred by it on their account and that member should agree to pay such commission. The bye-laws regarding charging of a commission made by a society and approved by the Registrar of the Cooperative Societies appears to be in order.

4. If it is decided to amend the Order in the manner indicated above, the Milk Commissioner should consider whether a society should sell hay to its members at <u>wholesale</u> rates or at <u>retail</u> rates. In order to ensure that a society is not selling at a price higher than that notified by the Government a society may be asked to recover its commission independently.

5. The mistake now pointed out by the Civil Supplies Department in clause 8B(2) of the order may be corrected by amending the Order as in the appended draft.

Sd/- J.R.Dhurandhar, 24/10
Additional Secretary to Government.

U.R. to C.S.D. No.G/631 dated the 26th October 1949.

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Office of the R.L.A.

The Bombay Hay Trade Licensing Order, 1944.

A hay dealer has been defined in sub-clause (d) of clause 2 of the Bombay Hay Trade Licensing Order, 1944 as meaning a person who holds stocks of hay in the Districts of Thana or Surat and carries on the business of selling hay through a hay commission agent or by himself in the Greater Bombay and the Scheduled Villages. Condition 4 of the Hay Dealer's Licence in Form D appended to the said Order provides that the licensee shall despatch his hay in accordance with such programme as may be fixed and communicated to him by the Licensing Authority from time to time and to such grass yard in the Greater Bombay and the Scheduled Villages as may be specified by the Licensing Authority. That condition further provides that the Licensee shall comply with any ~~of~~ further directions that may be given to him from time to time by the Licensing Authority in regard to the purchase, sale, transport, storage or accounting of hay. Reading the definition and the first paragraph of condition 4 it is obvious that the programme referred to in the said condition is in respect of the despatching of hay from Thana and Surat Districts to Greater Bombay and the Scheduled Villages. This part of the condition has therefore nothing to do with the supplying of hay to scarcity areas in Gujrath by the hay dealer. Strictly speaking even the second part of condition regarding giving of directions regarding purchase, sale, transport etc. appears to relate only to the legitimate business of the hay dealer as mentioned in the definition. But if a wide construction is put on this, it can be said that a direction to the hay dealer for supplying i.e. selling a prescribed quantity of hay to scarcity area at a particular rate is a direction issued under this condition. For a contravention of any of the conditions of the license the Licensing Authority may <u>without prejudice to any other action that may be taken against</u>

the licensee, suspend or cancel the licence. (Vide clause (6).) The action contemplated by the underlined words is the action by way of prosecution.- For breach of the direction to supply prescribed quantity of hay, the hay dealers licence can be suspended or cancelled. Furthermore he can be prosecuted but Government cannot recover the damages suffered by them from the amount outstanding to be paid to the licensee as price of the hay actually supplied. The suit if filed would be wholly indefensible. Director of Civil Supplies (Fuel) had discussed this aspect of the case with the R.L.A. when the general question of taking action against such defaulters was under his consideration.

Sd/- P.N.Lad, 2/12
Remembrancer of Legal Affairs.

U.R. to C.S.D. No.G-680 dated the 3rd December 1949.

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